

OR 001300-19

In the Matter of an Application of:

COLE FARRANT
(Name of Applicant)

AFFIDAVIT IN SUPPORT OF
APPLICATION FOR AN ORDER
COMPELLING SUBMISSION
TO A CHEMICAL TEST
PURSUANT TO V&T LAW
SECTION 1194(3)

for an Order to Compel

Kevin L. Wilcox to
(Name of Arrestee)

Submit to a Chemical Test,
Pursuant to V&T Law Section 1194(3)

State of New York

County of Broome ss:

COLE FARRANT, being duly sworn, deposes and says that:

1. I am a police officer employed by BIRCHMOUNT POLICE Department (or district attorney for the County of _____). I make this affidavit in support of an application for an Order to compel the above-named arrestee to submit to a chemical test pursuant to Vehicle and Traffic Law Section 1194(3).

...This affidavit is based upon my direct knowledge and/or upon information and belief, the source of my information and the grounds for my belief being as follows

(Describe who you spoke to concerning the accident, including the arrestee):

Patrick McCormick, Michael G. Maney, Nicholas H. Chase,
Kevin L. Wilcox

2. Based on the above, I have a reasonable cause to believe that on the 11th day of MARCH, 2011, at approximately 3:26 (a.m. / p.m.) the arrestee was the operator of a motor vehicle, more particularly described as a 1995 JEEP WRANGLER registered in the State of NEW YORK and bearing license plate number 6JE 8417 which was operated on BEEHOUER a public highway in Broome County, New York.

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In the course of such operation, a person or persons other than the arrestee was/were killed or suffered serious physical injury as that term is defined in Penal Law Section 10.00(10). Upon information and belief, the accident occurred as follows:

Subject was traveling South on Beethoven St when witnesses stated he appeared to fall asleep and travelled left onto the curb and struck 2 pedestrians who were in the front yard of 49 Beethoven St. Subject initially was unaware he was involved in an MVA but later stated that the accident was due to his Peddal which "Stuck".

As a result of the accident, the following person or persons was/were killed and/or suffered the following serious physical injury:

26-99 BREITBAY LASERIKO - MULTIPLE FRACTURES, SPLEEN + LIVER LAC
INTERNAL BLEEDING.

7-02 HARPER STANTZ - SEVERE HEAD INJURY, INTERNAL BLEEDING, DETACHED LEG -

3. A breath test administered by the police officer in accordance with V&T Law Section 1194(1)(b)

indicated that alcohol has been consumed by the arrestee.

-OR-

Based on the totality of the following circumstances, there is reasonable cause to believe that the arrestee was operating the motor vehicle in violation of Vehicle and Traffic Law Section 1192

(Describe specific circumstances indicating intoxication/impairment)

Subject Admissions to having used Suboxone - 8mg 30 mins prior to operating his motor vehicle. Subject exhibited constricted pupils, was swaying and stated he must've blacked out prior to accident. SFST'S 0 out of 6 (consistent with drug use) eyes blood shot/glossy
MVA
12/11/19

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Walk and Turn: 2 out of 8 clues - Failure
Arms raised, Could not keep balance during instructional phase.
Throughout test

One legged Stand: 2 out of 4 clues - Failure.
Swaying while balancing, Arms raised

Subject's Speech was Slow/Lethargic.

DRE Evaluation Conducted in which DRE's
Observation of Defendant's appearance/mannerism/
Physical characteristics were consistent with:
Recent opiate use.

Subject had recent track marks on both
arms

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4. At 4:12 (a.m. / p.m.), on the 11th day of MARCH, 2019, the above-named arrestee was placed under arrest for a violation of V&T Law Section 1192, subdivision 4.

5. After being placed under arrest, the arrestee refused to submit to a chemical test in accordance with the provisions of Vehicle and Traffic Law Section 1194 by

(Describe the circumstances of the refusal)

WHEN FIRST ASKED TO SUBMIT TO BLOOD TEST DEFENDANT REQUESTED OPPORTUNITY TO SPEAK WITH ATTORNEY AFTER SPEAKING WITH ATTORNEY PAUL BATTISTINI DEFENDANT WAS AGAIN ASKED IF WOULD SUBMIT TO CHEMICAL TEST OF BLOOD + DEF. ANSWERED NO. I WAS TOLD KAT TO CHEMICAL TEST WARNINGS WERE THEN READ TO DEF A TOT OF 2 TIMES & DEF. THEREAFTER REFUSED 2 MORE TIMES 2 MORE

5. After being placed under arrest, the arrestee is unable to give consent to a chemical test in accordance with Vehicle and Traffic Law Section 1194 because

(Describe the incapacity)

WHEREFORE; it is respectfully requested that the Court issue an order requiring the arrestee to submit to a chemical test to determine the alcoholic and/or drug content of his/her blood and directing a person authorized by Vehicle and Traffic Law Section 1194(a)(1) to withdraw a blood sample from the arrestee for the purpose of determining the alcoholic and/or drug content thereof.

Adi Tamm
C. FARRANT

Sworn to this 11 day
of MARCH of 2019 @ 7:06p

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K. P. Dwyer
(Judge/Justice)
(Notary Public)

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